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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,610	03/13/2001	John J. Coogan JR.	T31-001	9302

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EXAMINER

HANLEY, SUSAN MARIE

ART UNIT	PAPER NUMBER
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1651

MAIL DATE	DELIVERY MODE
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08/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/805,610	Applicant(s) COOGAN ET AL.	
	Examiner Susan Hanley	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4, 8, 9, 16, 17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 8, 9, 16, 17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment and remarks filed 4/9/07 are acknowledged.

Claims 2-4, 8, 9, 16, 17 and 19-21 are pending and under examination.

The cancellation of claims 1, 5 and 6, and amendment of claims 2-4, 8 and 9, has overcome the rejection of record in the last Office action. However, new grounds of rejection are made as follows.

Claim Rejections - 35 USC § 112

Claims 2-4, 8, 9, 16, 17 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: The preamble of the claim is directed to a system for treating complex fluids, yet the limitations that describe the system (parts (a) and (b) of the claim) fail to put forth the relationship between the system and the complex fluid. Furthermore, it would appear that a system that generates light requires a power supply to do so.

Claim 9 is rejected because it is unclear if "a housing" in line 2 of the claim is the same as the housing recited in claim 16 or if it refers to a second housing. The use of the article "a" implies the latter.

Claims 2-4, 8, 17 and 19-21 are dependent claims that do not overcome the deficiencies of the independent claim that they are dependent therefrom.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4, 16, 17 and 19 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kogure et al (US 6,379,024).

Kogure discloses the set up for a conventional dielectric barrier excimer lamp in Fig. 13. A lamp unit 40 has an excimer lamp 42 inside a metal container 41. This disclosure meets the limitations of claim 16 wherein a photon-producing gas is disposed and separate from its housing (the metal container). The excimer lamp 42 has a discharge gas such as xenon disposed between an inner and an outer cylindrical tube. This disclosure meets the limitations pertaining to a gas bound in a volume. Both tube are made of quartz glass. Application of a high voltage causes the excimer lamp 42 to radiate UV light that has a wavelength that is characteristic to the excimer gas. In col. 7, lines 20-40, Kogure teaches the types of excimer gases (as in instant claim 17) and the wavelength at which they generate light which met the wavelength limitations of instant claim 4. A single wavelength implies that monochromatic light is generated, thus meeting the limitations of claim 16 pertaining to monochromatic light. The metal container 41 has a light window 44 made of a synthetic

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quartz glass through which the excimer-generated UV light is transmitted onto a work area. This disclosure meets the limitations of instant claim 16 because the housing has at least one light emitting surface that emits over a desired exposure area. The disclosure of a quartz plate satisfies instant claim 19. The housing is water-tight because Kogure teaches that an inert gas flows within the housing. A gas-tight housing is inherently water-tight, as in instant claim 16.

The recitation "a system for treating complex fluids" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 2-4, 8, 9, 16, 17, 19 and 20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 7,057,189. Although the conflicting claims are not identical, they are not patentably distinct claim 6 which depends from claim 1 of '189 is directed to a non-laser light source that is positioned adjacent to a complex fluid comprising blood products, pharmaceuticals, injectables and vaccines wherein the light source is transmitted through a transparent portion of an outer wall of a non-laser light source. Claim 1 of '189 recites that the non-laser light assembly comprises a housing, a light source, a bounded volume of a photo-producing gas that is positioned within the housing, wherein the housing comprises a transparent portion and the bounded source is adapted to receive a cooling fluid that flows between the inner wall of the outer wall of the housing and in direct contact with the light source. These claims overlap instant claims 2, 3, 8, 9, 16, 19 and 20. Claims 2 and 3 of '189 are drawn to excimer gases and monochromatic light and claim 4 is drawn to a quartz covering of the transparent portion of the housing. These claims overlap instant claims 4, 17 and 20. Claims 2-4 of '189 are not directly linked to claim 6 of '189 but said claims are clearly defined species in a genus.

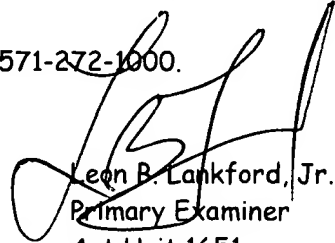
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Hanley whose telephone number is 571-272-2508. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan Hanley
Patent Examiner
AU 1651



Leon B. Lankford, Jr.
Primary Examiner
Art Unit 1651